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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAR 25 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of the Commission's Rules) WT Docket No. 96-6
To Permit Flexible Service Offerings)
in the Commercial Mobile Radio Services)

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REPLY COMMENTS OF AT&T CORP.

AT&T Corp. ("AT&T") submits these reply comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹⁷ AT&T reiterates its strong support for the Commission's proposal to clarify that commercial mobile radio service ("CMRS") providers may offer fixed services on their wireless spectrum. The overwhelming majority of commenters agree that this clarification will enhance competition and benefit consumers. Market forces will ensure the availability of the most efficient services to meet customer needs.

Several other points are supported by the comments as well. The Commission should take this opportunity to ensure comparable treatment of all CMRS technologies and allow licensees in these services the maximum flexibility to provide all types of fixed services. Imposing restrictions on permissible fixed use of the spectrum would impede the ability of wireless providers to meet customer demand. The Commission also should ensure that fixed

¹⁷ Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, Notice of Proposed Rulemaking, WT Docket No. 96-6 (released Jan. 25, 1996) ("Notice").

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services provided by wireless carriers remain classified as CMRS until and unless these services become a substitute for wireline local loop service. Any other classification would heighten rather than minimize the regulatory barriers to true competition.

I. Commenters Overwhelmingly Support the Proposed Clarifications

The commenters -- LECs,^{2/} CMRS operators,^{3/} state regulators,^{4/} and equipment manufacturers^{5/} -- overwhelmingly support the Commission's proposals for clarifying that CMRS providers have the regulatory flexibility to offer fixed services. Like AT&T, they believe that allowing wireless providers to respond rapidly to marketplace demands will enhance competition both among wireless services, specifically, and between wireless and wireline services, generally. In addition, some commenters point out that such flexibility will encourage deployment of CMRS facilities in areas where landline networks may not be economical.^{6/} Confirmation that wireless providers may use the allocated spectrum for fixed

^{2/} See, e.g., Comments of Bell Atlantic at 2 ("Bell Atlantic Comments"); Comments of BellSouth Corporation at 1 ("BellSouth Comments"); NYNEX Comments at 2; Comments of Alliance of LEC-Affiliated Wireless Services Providers at 6 ("Wireless LEC Comments").

^{3/} See e.g., Comments of Cellular Telecommunications Industry Association at 1 ("CTIA wholeheartedly endorses the Commission's proposals") ("CTIA Comments"); Comments of Personal Communications Industry Association ("PCIA Comments"); Comments of Sprint Spectrum at 1 ("Sprint Spectrum Comments"); Comments of Winstar Communications, Inc.

^{4/} See Initial Comments of the National Association of Regulatory Utility Commissioners at 4, 5 ("NARUC supports the efficient use of technology in the provision of local exchange service") ("NARUC Comments"); Comments of the New York State Department of Public Service at 1 ("The NYDPS concurs with the Commission goal of removing barriers to competition in the provision of local exchange service.") ("NYDPS Comments").

^{5/} See Comments of Northern Telecom Inc. at 2-4 ("Nortel Comments").

^{6/} Id. at 1, 3; Comments of the Rural Cellular Association at 3-4 ("RCA Comments").

services will advance the longstanding congressional and agency goals of introducing competition into all aspects of the telecommunications marketplace.^{7/}

The commenters also agree that the Commission's fears of insufficient spectrum for mobile services are unfounded. They point out that the CMRS market is sufficiently competitive to ensure that spectrum will be used in a demand-sensitive manner.^{8/} Indeed, responsiveness to customers is better achieved without government restrictions on permissible use.

There is already strong support at the Commission for "relying on market forces" to "foster innovation and competition... and efficient spectrum use."^{9/} AT&T agrees that the Commission should provide "wide latitude for market forces,"^{10/} which are the most appropriate mechanism to ensure that PCS, cellular, and SMR services will utilize spectrum efficiently and meet customer needs.^{11/} Consumer demand, not "regulatory prerogatives," should determine the nature and type of wireless services provided by CMRS licensees.^{12/}

^{7/} See Comments of AT&T Corp. at 2-4.

^{8/} CTIA Comments at 4; RCA Comments at 3.

^{9/} FCC News Release, "Chairman Hundt Says Telecom Bill Will Spur Genuine Competition; Urges More Uses of New Spectrum and Information Technology" (Feb. 2, 1996).

^{10/} Id.

^{11/} See CTIA Comments at 3-4; Sprint Spectrum Comments at 2; PCIA Comments at 6-7; RCA Comments at 2.

^{12/} Comments of Western Wireless Corporation at 3 ("Western Wireless Comments").

The commenters generally agree, moreover, that the Commission should not impose arbitrary restrictions on the types of fixed wireless services offered by a CMRS licensee.^{13/} Allowing licensees the freedom to choose which fixed services to provide will maximize customer choice and enhance telecommunications competition.^{14/} By contrast, confining fixed services to "wireless local loop" would stymie the development and deployment of technology, make it difficult for wireless providers to meet customer demand, and create unnecessary confusion. As SBC Communications, Inc. correctly observes, "[t]he industry need not fall into this regulatory and definitional morass if the Commission simply concludes that CMRS providers may offer fixed services without limiting definitions."^{15/}

Finally, AT&T reiterates that the Commission should not differentiate between the various categories of CMRS. The Commission has previously found that CMRS consists of "substantially similar services by virtue of competition among and between the services."^{16/} Accordingly, all broadband and narrowband CMRS licenses should be permitted to provide

^{13/} See, e.g., CTIA Comments at 4-5 (noting that "all CMRS services should be permitted to provide fixed services without restriction"); BellSouth Comments at 1; Comments of Personal Access Communication Systems Providers' Forum at 3 ("CMRS providers [should be permitted] to offer any fixed services").

^{14/} Western Wireless Comments at 2.

^{15/} Comments of SBC Communications, Inc. at 3. If the Commission nevertheless chooses to limit permissible fixed services to the "wireless local loop", the term should be defined as broadly as possible. For example, as the Commission suggests, potential uses, such as wireless Internet access, electronic funds transfers, point-of-purchase credit card verification, and remote monitoring, should be subsumed within the definition. See Notice at ¶ 22.

^{16/} See Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 7988, 7996 (1994).

all fixed services.^{17/} This approach will promote competition and further the Commission's goal of regulatory simplicity.^{18/}

II. Fixed Services Provided by Wireless Carriers Should Remain Classified as CMRS

Most commenters, including LECs and CMRS providers, observe that it is premature for the Commission to consider alternatives to the CMRS regulatory classification for fixed wireless services. BellSouth, for example, suggests that the Commission continue to regulate fixed wireless services as CMRS until the Commission determines that they are "being used as a substitute for local exchange service by a substantial portion of the public within [the CMRS provider's] service area."^{19/} Similarly, Bell Atlantic believes that fixed wireless services "should be regulated in the same manner as comparable wireline services when they become commercially viable."^{20/}

Contrary to the suggestions of NARUC and the NYDPS, the Commission should not immediately remove all wireless fixed services from the CMRS rubric.^{21/} Subjecting wireless carriers to multiple layers of regulation at this time will inhibit licensees from developing the services desired by customers and would create confusion among subscribers, federal and state regulatory bodies, and licensees. If and when CMRS services actually

^{17/} PCIA Comments at 4-6.

^{18/} Id.

^{19/} BellSouth Comments at 4.

^{20/} Bell Atlantic Comments at 1.

^{21/} NARUC Comments at 1-5; NYDPS Comments at 1-3.

become a substitute for wireline local loop service,^{22/} the Commission can revisit the issue of regulatory classification, and can take appropriate steps to ensure, for example, that a customer's right to select interexchange carriers is preserved.^{23/}

There is also no reason to encumber this proceeding with consideration of the various LEC pleas for less FCC oversight of telephone company activities. For example, GTE argues that before the Commission implements its CMRS flexibility proposals, it must, among other things, adopt a new universal funding mechanism and allow LECs greater pricing flexibility. While AT&T agrees that the Commission should move expeditiously to remove all implicit subsidies from LEC rates, especially interconnection and access charges, no valid reason exists for delaying the procompetitive actions proposed in the Notice until this can be accomplished.^{24/} Similarly, there is no basis for addressing NYNEX's demand

^{22/} Congress has recognized that, at the point at which the service "substantially replaces" another, a re-evaluation of its regulatory status may be appropriate. Cf. 47 U.S.C. § 332(c)(3)(A)(ii) (States are preempted from regulating CMRS rates unless wireless "services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State."); 47 U.S.C. § 251(h)(2)(B) (carriers shall not be treated as incumbent LECs unless "such carrier has substantially replaced an incumbent local exchange carrier"). In this regard, it is noteworthy that, under the 1996 Act, CMRS is not classified as a LEC service unless the Commission determines that "future circumstances warrant" including CMRS providers that provide telephone exchange service or exchange access pursuant to the definition of a "local exchange carrier." 47 U.S.C. § 153(44), added by 1996 Act, § 3(a); see also Conference Report at 116.

^{23/} The Commission retains the authority to require providers of CMRS, whether mobile or fixed, to afford their subscribers access to the interexchange carriers of the subscribers' choice. 47 U.S.C. § 332(c)(8), added by 1996 Act, §705.

^{24/} AT&T agrees with the Commission's proposal to defer consideration of any universal service issues that may be raised by this Notice until the Commission addresses universal service generally, as mandated by the 1996 Act. See 47 U.S.C. § 254. See also BellSouth Comments at 4-5; CTIA Comments at n.15; Comments of Nextel Communications, Inc. at 4; Comments of Omnipoint Corporation at 9.

that the Commission eliminate the cellular separate subsidiary rule.^{25/} This matter is not relevant to the regulatory flexibility at issue here and should not be considered at this time.^{26/}

^{25/} 47 C.F.R. § 22.903. As AT&T has explained on numerous occasions, the cellular structural separation requirement serves an important purpose and should be retained. See Comments of AT&T Wireless Services, Inc. on Request of U S WEST Communications, Inc. for Limited Waiver of Section 22.903 of the Commission's Rules, filed February 2, 1996; Comments of AT&T Wireless Services, Inc. on BellSouth Corporation's Request for Resale Authorization, filed September 18, 1995.

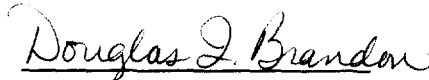
^{26/} The Commission has asked for comment on whether additional interference or operational rules are needed to accommodate fixed wireless local loop services. Notice at ¶ 15. AT&T does not believe that a review of the technical rules should delay implementation of the Commission's proposals in the Notice. If the Commission later determines that such a review is necessary, it should be undertaken in a further rulemaking proceeding after the introduction of fixed wireless services.

Conclusion

For the foregoing reasons, the Commission should clarify that all CMRS providers may offer fixed services without restriction on their wireless spectrum, and that such fixed services will remain, for the present, classified as CMRS.

Respectfully submitted,

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March 25, 1996

CERTIFICATE OF SERVICE

I, Tanya Butler, hereby certify that on this 25th day of March, 1996, I caused a copy of the foregoing Comments of AT&T Corp. to be sent by first class mail, postage prepaid, or to be delivered by messenger (*) to the following:

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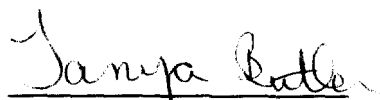
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